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Supreme Court, U.S.

FILED

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No. 93-5256

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1993

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FREDEL WILLIAMSON,  
*Petitioner,*  
v.

UNITED STATES OF AMERICA,  
*Respondent.*

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On Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit

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**JOINT APPENDIX**

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PETITION FOR CERTIORARI FILED JULY 15, 1993  
CERTIORARI GRANTED JANUARY 10, 1994

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## RELEVANT DOCKET ENTRIES

Date	Proceedings
04/12/89	Harris and Williamson INDICTMENT in 3 counts
04/26/89	ARRAIGNMENT, Both defts. PLED NOT GUILTY. (No Trial Date Set)
04/26/89	Harris MOTION TO SUPPRESS Illegally Obtained Evidence and the Fruits Thereof
05/02/89	Govt MOTION for Hearing on Conflict of Interest
05/02/89	Govt RESPONSE to Deft's Motion to Suppress
05/10/89	Harris RESPONSE to Govt's Motion for Hearing on Conflict of Interest
05/25/89	CONFLICT OF INTEREST HEARING before Judge Duross Fitzpatrick. * * *
06/01/89	Govt MOTION for Severance of Defts.
06/09/89	Harris Response to Govt's Motion for Severance and Deft. HARRIS Motion for Hearing Pursuant to Rule 14 of the F.R.C.P.
06/16/89	ORDER * * * Granting Govt's Motion for Severance (Deft. Williamson)
07/06/89	Harris SUPPRESSION HEARING before DF in Albany, Georgia. Harris stipulates non-jury trial; hearing continued until July 10, 1989; bench trial will begin at conclusion of suppression hearing July 10, 1989; MINUTE SHEET filed
07/10/89	Harris SUPPRESSION HEARING (continuation) before DF in Macon, Georgia. Govt proceeds with evidence, rests, Deft proceeds with evidence. Counsel given until 7/13/89 to file supplemental briefs. Matter set for trial 7/19/89 at 10:00 a.m. non-jury. Attached Govt and Deft exhibits sheets. MINUTE SHEET filed.
07/11/89	Williamson JURY TRIAL, Voir Dire, trial began
07/11/89	ORDER of Contempt against HARRIS for not willingly testifying in trial of Williamson

Date	Proceedings
07/11/89	MOTION compelling Harris to testify at trial of WILLIAMSON
07/11/89	ORDER compelling Harris to testify at trial of WILLIAMSON
07/12/89	Williamson JURY TRIAL, Day 2
07/13/89	Williamson JURY TRIAL, Day 3, WILLIAMSON found GUILTY on all three counts, Deft. remains in custody pending sentencing. * * *
07/13/89	Harris SUPPLEMENTAL BRIEF in Support of MOTION TO SUPPRESS
07/13/89	Govt SUPPRESSION MEMO
07/17/89	RESPONSE to Deft's SUPPLEMENTAL BRIEF in Support of Motion to SUPPRESS
07/17/89	ORDER substituting copies for originals—original exhibits in Williamson trial are needed for HARRIS trial
07/18/89	ORDER DENYING MOTION TO SUPPRESS for Deft HARRIS
11/08/89	Williamson SENTENCE (DF): 327 mos. impri. on Ct. 1; 327 mos. impri. Ct. 2; 60 mos. impri. Ct. 3; Supervised Release of 5 yrs not to possess firearms or other dangerous weapons or drugs; Deft shall not violate any other federal, state or local laws; \$150.00 mandatory assessment; no other costs or fine
11/15/89	WILLIAMSON JUDGMENT filed
11/16/89	NOTICE OF APPEAL as to judgment and sentence rendered Nov. 8, 1989.
05/10/91	11th Circuit Court of Appeals ORDER that Appellee's Motion to Remand to District Court for Evidentiary Hearing is Granted

Date	Proceedings
11/26/91	MINUTE SHEET of Evidentiary Hearing held before DF in Macon, GA; Further briefs due in 10 days
11/27/91	Govt and Williamson EXHIBIT Sheet w/attachments.
11/27/91	Williamson EXHIBIT Sheet w/attachments.
12/12/91	GOVT'S BRIEF
12/20/91	Williamson POST-HEARING MEMORANDUM on Limited Remand
05/08/92	ORDER FINDING Govt has not shown that Deft Williamson caused Deft Harris to be unavailable at trial.



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

---

Criminal No. 89-37-MAC(Df)

UNITED STATES OF AMERICA

vs.

REGINALD BERNARD HARRIS,  
a/k/a "REGGIE",  
FREDEL WILLIAMSON,  
a/k/a "FRED".

---

Violation: 21 U.S.C. § 846  
i/c/w  
21 U.S.C. § 841(a)(1)  
21 U.S.C. § 841(a)(1)  
18 U.S.C. § 2  
18 U.S.C. § 1952  
18 U.S.C. § 2

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[INDICTMENT]

THE GRAND JURY CHARGES:

COUNT ONE

That from on or about March 1, 1989, to on or about March 26, 1989, in the Macon Division of the Middle District of Georgia,

REGINALD BERNARD HARRIS,  
a/k/a "REGGIE",  
and  
FREDEL WILLIAMSON,  
a/k/a "FRED",

did unlawfully and willfully combine, conspire, confederate, agree, and have a tacit understanding with each other and with other persons, both known and unknown to the Grand Jury, knowingly and intentionally to possess with intent to distribute and to distribute a Schedule II controlled substance, to-wit: approximately nineteen (19) kilograms of cocaine; all in violation of 21 U.S.C. § 846, in connection with 21 U.S.C. § 841(a)(1).

COUNT TWO

That on or about March 26, 1989, in the Macon Division of the Middle District of Georgia,

REGINALD BERNARD HARRIS,  
a/k/a "REGGIE",  
and  
FREDEL WILLIAMSON,  
a/k/a "FRED",

aided and abetted by each other and by other persons, both known and unknown to the Grand Jury, did unlawfully, knowingly, and intentionally possess with intent to distribute a Schedule II controlled substance, to-wit: approximately nineteen (19) kilograms of cocaine; all in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

COUNT THREE

That on or about March 26, 1989, in the Macon Division of the Middle District of Georgia,

REGINALD BERNARD HARRIS,  
a/k/a "REGGIE",

defendant herein, aided and abetted by

FREDEL WILLIAMSON,  
a/k/a "FRED",

and by other persons, both known and unknown to the Grand Jury, did travel in interstate commerce from the State of Florida, to Dooly County, State of Georgia, with intent to promote, carry on, and facilitate the promotion and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving the possession with intent to distribute, and distribution, of cocaine, in violation of Title 21, United States Code, Section 841 (a)(1), and thereafter did perform and attempt to perform acts to promote, carry on, and facilitate the promotion and carrying on of said unlawful activity; to-wit: the transportation of and concealment of approximately nineteen (19) kilograms of cocaine; all in violation of 18 U.S.C. §§ 1952 and 2.

A TRUE BILL.

/s/ Dennis Z. Hunnicutt  
Foreman of the Grand Jury

Presented by:

/s/ Deborah G. Fowler  
DEBORAH G. FOWLER  
Assistant United States Attorney  
Drug Task Force/Narcotics Unit

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

(Caption Omitted in Printing)

ORDER

Pending before this court are Defendant Williamson's Appeal of Denial of Bail and Detention Hearing and the Government's Motion for Severance. Having read and considered both of these motions, the court hereby issues its ruling as follows.

\* \* \* \*

II. *Motion for Severance*

The indictment in this case charges both Defendant Harris and Defendant Williamson with drug conspiracy offenses. The Government has filed a motion to sever the two Defendants so that they can be tried separately. In support of its motion, the Government has stated that it plans to introduce certain post-conspiracy statements of Defendant Harris that are likely to incriminate Defendant Williamson. The Government contends that the introduction of these statements at a joint trial would violate the sixth amendment rights of Defendant Williamson.

After reading the arguments of both parties, the Court is convinced that these two Defendants should be tried separately. By trying the two Defendants separately, the court will avoid the possibility of violating Defendant Williamson's constitutional rights. On the other hand, the court can see no compelling reason for trying the Defendants together in one trial. For these reasons, the Government's motion should be granted.

For the reasons stated above, the court hereby . . .  
GRANTS the Government's Severance.

SO ORDERED, this 16 day of June, 1989.

/s/ Duross Fitzpatrick  
DUROSS FITZPATRICK, Judge  
United States District Court

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

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(Caption Omitted in Printing)  
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\* \* \* \*

[Tr. 114] MR. FOWLER: Your Honor, the Government would call Reginald Bernard Harris.

THE COURT: All right, bring Mr. Harris in.

REGINALD BERNARD HARRIS,

after being called as a witness, was administered the oath by the clerk:

MR. HARRIS: I take the 5th Amendment.

MS. SALO: Before swearing the witness, I think we need to get into the Government's motion we have been handed about five minutes ago.

THE COURT: All right.

MS. FOWLER: If your honor please, if we may go first, as it is our witness, at this time I would like the record to reflect that the jury is out and that this is done outside their presence and that Reginald Bernard Harris' two attorneys are here in the courtroom with him, that they have previously advised the attorney for the Government that Mr. Harris intends to take the 5th Amendment, that he has in fact just taken the Fifth.

We filed a motion with the Court asking for a compulsion order. Attached thereto is the approval of the Deputy Assistant Attorney General of the United States Department of Justice, and we would ask that the Court sign the compulsion order pursuant to the position of Title 18 U.S.C., Section 6001, et seq.

[Tr. 115] It is my understanding as well from Ms. Salo, who represents Mr. Harris, he intends to take the Fifth,



and if he so states to the Court, once the compulsion order is signed, we would request that the Court advise him if he continues to, continues to say he will take the Fifth, we have got an order to ask that he be held in contempt. That is, to pull dead time until such time as he complies with the Court's compulsion order.

THE COURT: Ms. Salo.

MS. SALO: Mr. Adams.

MR. ADAMS: Your Honor, I'm Ed Adams. The Government has filed a motion to compel under 6001, but my client has invoked the privilege against self incrimination, and that must be sustained unless it is perfectly clear that any testimony he will give will not be used against him to incriminate him. The Government has not come forward to show that. Unless they bring in some evidence that the testimony he gives will not be used to incriminate him in future trials, any testimony he has, any testimony, he has that right to invoke the privilege.

THE COURT: Mrs. Fowler.

MS. FOWLER: Your Honor, the nature of a compulsion order is just that, it is compelled testimony, and it would be subject to suppression at any other hearing in which it is raised, because it is compelled. That is the purpose of an [Tr. 116] immunity order, that is the purpose of it having to be approved by the Justice Department, and that is the purpose of it being an order from the Court. It says that it will not be used against him and that he is being compelled, and we provided case law earlier to the law clerk about how this protects him. That is the reason we sought this and that is the reason we prepared it for the Court, because it does compel him and it prohibits it from being used against him in another proceeding, and I will state for the record as well, Your Honor, this morning we filed a sealed package—

MR. SILVER: I don't have a copy.

MS. FOWLER: —a sealed package of evidence to be filed with the Court, of the evidence we had against Reginald Bernard Harris before this trial begins, so if any

issue arises down the road as to this issue, this evidence being used against him, there is a sealed copy in the Court's file of what evidence we had on Reginald Bernard Harris before this compelled order.

THE COURT: It is your position this testimony here today will not be used against him?

MS. FOWLER: Cannot, Your Honor, either way.

MR. ADAMS: Your Honor, that would be fine, but as we all know, Mr. Harris is a co-defendant in this and he is facing a bench trial before you on July the 19th. This evidence might be not used against him, but it surely will be [Tr. 117] heard by you. I think the cases will show that any time that any evidence that might be incriminating, it cannot be, I know you will do your best to disregard all the testimony, but I think that would be hard to do.

THE COURT: I tell the jury to do that all the time and I'm convinced they do. I certainly think I can.

MR. ADAMS: As far as the order goes, I see no mention of immunity that she referred to. She said she had an order in here that any testimony would not be used against him. I do not see that, not in the document she gave me.

MS. FOWLER: Your Honor, it is stated in the statute, it refers to the statute in the order, and the statute is self explanatory, and as I understand it, he is going to continue to take the Fifth, even after being ordered, so the chance of the Court hearing anything from him is nill.

THE COURT: I never have had anybody take the Fifth on oath before, so I have a feeling he is planning to do it.

MR. ADAMS: I would cite to the Court United States versus Dapcie, which the cite is 664 Fed 2d 75. This is a 5th Circuit case, which gives him the right to, if the defendant reasonably apprehend a risk of self incrimination if he testifies, he may properly invoke the privilege.



THE COURT: Does that contemplate 18 U.S.C. 6001.

MR. ADAMS: Yes, sir.

[Tr. 118] THE COURT: Let me see it.

MR. ADAMS: You might have to pull that case, Your Honor.

THE COURT: U.S. versus Andre Dapcie? Well, the first thing I notice in the, it says he was reversed, the Judge was reversed, the Court of Appeals, Judge Tjoflat, said District Court had no independent authority to bestow use of immunity on a witness. Isn't that different? Did Judge, did this judge have this use of immunity from the Department of Justice as we have here?

MS. FOWLER: No, Your Honor. The Justice Department is the only one can give immunity from prosecution, and that is the purpose of the approval, so that the Court can order it. What that case says is that the court cannot, on his own motion, say, "Well, if you will talk, I will immunize you."

THE COURT: It seems to me that—

MS. FOWLER: That case is distinguishable.

THE COURT: Distinguishable from this one for that reason alone, in that I am not doing, I'm only acting in pursuant to 6001, et seq.

MR. ADAMS: Also, Your Honor, you asked us to look up whether any testimony he gave could be used by the State of Georgia. I'm not able to cite any cases, so we are not sure whether it can or not, so we would also invoke it on [Tr. 119] that, the testimony he gives here might be able to be used by the State of Georgia.

MS. FOWLER: Your Honor, we would cite in re grand jury proceedings of Hardman, which is at 757 Fed 2d, 1580, that states state courts are required to respect immunity granted under the federal witness immunity statute and that the immunity is co-extensive with 5th Amendment and subplants it, thus witness granted immunity is not entitled to take the Fifth Amendment.

THE COURT: All right, let me see it. It looks to me to be right on point with what we have here.

MR. ADAMS: That case also refers that the state can only grant the immunity granted by the Government.

THE COURT: No, what this case says, if this Court, through 18 U.S.C. 6002, grants immunity, then the State has to respect it, the State cannot use it. That is the way I, the way I read it. So, it's my opinion that if Mr. Harris is protected by the authority from this Department of Justice granting him this immunity, that he is protected against prosecution in this court based on whatever he may say today, and he is also protected in any state court based on whatever he may say today. Any evidence that they may have developed up to this point, this moment in time, is, of course, not covered by the immunity. Unless you have something further, I'm prepared to compel him to testify and if he doesn't do [Tr. 120] so, I will find him in contempt. I'm going to give you a moment to confer.

MR. ADAMS: Thank you. Your Honor, for the record, since the order does not mention what type immunity he is being provided today, we would like to clear that up.

THE COURT: Well, he is being provided whatever is set out in 18 United States Code, Part 5, immunity of witnesses, Section 6001, through 6005. Of course, that deals with congressional proceedings, but in particular, it seems to be 6002, 6003. It encompasses whatever is in that, those two sections.

MS. FOWLER: If Your Honor please, just for the record, the immunity would cover any questions that we ask him or that he was asked on cross examination in this hearing only.

THE COURT: Yes. I mean, it's immunity from what he says. Anything you have independently of what he says is not covered.

MR. ADAMS: Your Honor, based on the fact we do not feel he has sufficient immunity, my client wishes to invoke the Fifth.

THE COURT: All right. Mr. Harris, you have heard your lawyer and I assume you understand that is his advice to you. I'm going to have to tell you that the Court does, in spite of your lawyer's statement, require you to answer. [Tr. 121] Now, if you do not answer the questions, do not give testimony, you will be found in contempt of court. If you are found, you are already in custody, but if you are found in contempt of court, the time that you serve will not be counted in your favor as time served. It is what they call dead time. So, I am going to tell you that you are required by this Court, by lawful order of this Court to give testimony. Will you do so?

THE WITNESS: I take the Fifth, sir.

THE COURT: All right. I think that, I certainly don't, I won't try to change your mind. I do find Mr. Reginald Bernard Harris in contempt of court for failure to give testimony after immunity has been granted and order of compelling testimony has been issued. Today is the 11th?

THE CLERK: Yes, sir.

MS. FOWLER: Your Honor, for the marshal's clarification, that dead time will begin as of this moment.

THE COURT: Yes.

MS. FOWLER: Until such time as he purges himself of contempt. Is that correct?

THE COURT: That's correct. All right, you may go down.

MS. SALO: Your Honor, just for the record, 18 U.S.C. 6003 states that he can only be found in contempt and held in confinement until the proceedings—not 18, 6003, [Tr. 122] excuse me, 28, I had it here, I can get you the code cite, but it only allows, it is, under the contempt law, it only allows you to keep him in confinement until such time as these proceedings have stopped.

THE COURT: Well—

MS. SALO: So we ask—

THE COURT: He will be held, the dead time will continue so long as it is allowed and required by law,

whatever that is. Mrs. Fowler, I don't want to take the time, at least for now, we can decide how long that lasts at some other time.

You may go down.

(Witness excused).

THE COURT: We will take another witness. I guess you have one?

MS. FOWLER: There is just one more brief matter we can take up outside the presence of the jury.

MS. SALO: Your Honor, excuse me just one second. The code cite on that was 28 U.S.C., 1826.

THE COURT: 28, 1826?

MS. SALO: Yes.

THE COURT: Well, I don't have it here. Shall we proceed?

\* \* \* \*

MS. FOWLER: Yes, sir. Your Honor, we would ask under Federal Rules of Evidence, 804, hearsay exception, to [Tr. 123] declare as unavailable, that Reginald Bernard Harris be declared unavailable and that we be allowed to call Agent Walton to admit his statements. We cite the case of United States v. Robinson, which we previously provided to the Court, at 635 Fed 2d, 363, 5th Circuit, 1981.

THE COURT: I can't put my hand on it. Is that the one that was on the back of that?

LAW CLERK: Yes, sir.

MS. FOWLER: Which states witness made prior statement, but at trial refused to testify, and was held in contempt but preferred jail to testifying; and his statements previously were against interest because he implicated himself, and that they were against his penal interest because they stated his involvement in a drug conspiracy, and that he is unavailable because he refused to testify and had to be jailed. We would ask to call Agent Walton to admit his statements pursuant to 804—

THE COURT: Mr. Silver?



MR. SILVER: Judge, I'm looking at this brief that Mrs. Fowler has provided me, and I don't see the case that she has made reference to, something about Robinson.

THE COURT: 635 F 2nd, 364.

MS. FOWLER: I'm sorry, Your Honor, I believe Mr. Silver has the 404 brief.

MR. SILVER: Right.

[Tr. 124] MS. FOWLER: I didn't provide a brief.

MR. SILVER: I'm sorry, I thought you said that was what you were referring to.

MS. FOWLER: I'm referring to a case of U.S. v. Robinson.

MR. SILVER: I don't have that, Judge, so I can't respond to what she is saying.

THE COURT: Well, here it is. Why don't we take, take a moment or two and look at it. We will be in recess about five minutes while you examine that.

MR. SILVER: Thank you, Judge.

(Brief recess).

THE COURT: All right, Mr. Silver, have you got any comment?

MR. SILVER: Judge, on behalf of defendant Williamson, it would seem to me that Agent Walton's testimony still is not admissible against this defendant, and some of the objections that I would have thereto, first and foremost is, we don't know whether or not this statement, if in fact they did obtain a statement from Reginald Bernard Harris, whether or not it was obtained legally. We don't know whether or not any promises were made, since apparently, and I'm only assuming this, Judge, that if they obtained a statement from Reginald Bernard Harris, it was obtained from him during the time that he was in custody.

[Tr. 125] THE COURT: Well, I think it would be incumbent upon them to indicate it was made after Miranda warning was given and there were no promises or threats, wouldn't you, Mrs. Fowler? Do you—

MS. FOWLER: We cite United States v. Sims for the Court, headnote two. "A co-defendant cannot allege a constitutional violation, a defendant cannot allege a constitutional violation of a co-defendant, and is not a matter properly before the Court." It states even if they violated a co-conspirator's rights, that a defendant has no standing to assert that in his own defense.

That is United States versus Sims, 845 Fed. 2d, 1564.

THE COURT: That seems to be what it says, Mr. Silver.

MR. SILVER: Secondly, Judge, we would object further that this would in effect prohibit Mr. Williamson the right of effective cross examination of the co-defendant Harris and it would violate his 6th Amendment right to confrontation of Mr. Harris.

THE COURT: Now, the Government tried.

MR. SILVER: Yes, I understand.

THE COURT: In other words, it would seem to me that the Government has done all it can do to get Mr. Harris' testimony. Mr. Harris will not testify. I just wonder [Tr. 126] whether or not, after the Government has done all that it can do to procure the testimony and still can't get it, I mean, what if Mr. Harris was in jail, for instance, I don't want to say he was dead, because that might raise some other problems, but let's assume that Mr. Harris is in jail in some other country, incommunicado. You have got your denial of right of cross examination, or confrontation, but still, the Government can't do anything about that.

Isn't that—I tried, just as a matter of an antedote, I tried, myself, one time a very interesting case dealing with the right of confrontation. I think if it had been tried now it would have been reversed, where one co-conspirator was left in jail by the Government, by the State, while there were four conspirators, while another conspirator came to court and said my client killed these people in ambush because the other guy over in jail told him so.

In other words, he couldn't be cross examined because he didn't know anything except what the guy over in jail testified to. They wouldn't put him on the stand. I think that was a classic denial of right of confrontation, and the Government had it in its power to put him on the stand. They decided to feed his testimony through this other agent who said, "All I know is what he told me." But I don't know, I think they have done all they can do in this case.

[Tr. 127] MR. SILVER: And, Judge, finally, the case that Your Honor so kindly permitted me to review during the break, of United States versus Robinson, it appears, having read that decision, that this testimony should not be admitted at this time in this trial because the Court there adopts and uses the following expression, that it is admissible under 804, parenthesis, B, parenthesis, parenthesis three, parenthesis, only if corroborating circumstances clearly indicate the trustworthiness of the statement. So we don't, we don't know that yet.

THE COURT: Well, you don't mean corroborating testimony, but circumstances. In other words, if the Government can show me that there is likelihood that this is trustworthy testimony, is that your position?

MR. SILVER: Judge, the Court uses the words corroborating circumstances.

THE COURT: Now, what I'm saying, that means that if they had said corroborating testimony, such as with a confession, I think, but what I'm saying is, what you are saying is, Mrs. Fowler has the obligation to convince the Court that the agent's testimony is going to be trustworthy. Is that right?

MR. SILVER: I think that not only must she convince the Court that his testimony is going to be trustworthy, but it must, that his testimony must be [Tr. 128] corroborated.

THE COURT: I don't think so.

MS. FOWLER: If Your Honor please, it has to show that Reginald Harris' is corroborated. In United States

versus Alvarez, which is the second case we provided, which we will let Mr. Silver look at, it says that examples of corroboration can be found in Government's exhibits, i.e., plane tickets, receipts. We have already introduced such things as that.

THE COURT: But it doesn't require corroborating testimony.

MS. FOWLER: No, sir, it does not.

THE COURT: I don't think it does, either. I mean, I don't think, I think they, if they had meant testimony, they would have said it, because it's clear that in a confession you have to have corroboration.

MR. SILVER: Well, Judge, isn't that what the Government seeks to do here, because certainly from what I have read, from what has been provided me, the Government extracted a confession from Mr. Harris.

THE COURT: But there is corroboration. Well, my feeling is that the testimony is admissible; that Mr. Harris is unavailable. Where is the language in this Robinson case you are pointing to?

MR. SILVER: Judge, I think it was on the second [Tr. 129] page, if I'm not mistaken.

THE COURT: 364?

MR. SILVER: I think it is, sir.

THE COURT: Okay. It seems to me like we probably need to have a little hearing on that before we bring it in, and I think we ought to just go ahead and let this jury go and take care of that this afternoon in-camera.

MS. FOWLER: We have no objection, Your Honor.

THE COURT: We will still finish on time, won't we?

MS. FOWLER: Yes, sir.

THE COURT: All right, bring the jury in, please. I believe the best, I believe in an abundance of precaution, we need to put Mr. Walton on the stand and let you, I'm going to let you have at him and see whether or not the corroborating circumstances are there, and then I will rule on it. Bring the jury on in.

\* \* \* \*



[Tr. 131] DONALD E. WALTON,  
after being first duly sworn, testified as follows:

BY MS. FOWLER:

Q Tell us your name, please, sir.

A Donald E. Walton.

Q And Mr. Walton, are you a special agents with the Drug Enforcement Administration?

A Yes, ma'am, I am.

Q How many years of law enforcement experience do you have?

A Approximately nine.

Q Did you have occasion—Your Honor, I'm going to try to go through the foundation questions quickly.

Did you have occasion on Sunday, March 26th, 1989, to interview Reginald Bernard Harris?

A Yes, ma'am, I did.

[Tr. 132] Q Is that the same Reginald Bernard Harris that just took the 5th Amendment before this Court?

A That's correct.

Q Did you read him his Miranda rights before you interviewed him?

A Yes, ma'am.

Q What did you use to read those rights to him?

A A standard form, DEA form 13A that is provided to me by the Drug Enforcement Administration, that I carry with me.

Q Did he indicate a willingness to talk to you?

A Yes, ma'am, he did.

Q And what specifically did he tell you about an attorney?

A He stated specifically, after having been provided the rights contained on that card, that he did not want an attorney present.

Q Now, was that here in this courthouse?

A Downstairs in the Marshal's Service office.

Q And that is after he had been arrested, is that correct?

A Yes, ma'am.

Q In connection with the 19 kilograms?

A That's correct.

Q Did you threaten him in any manner?

A No, ma'am.

[Tr. 133] Q Did you promise him anything?

A No, ma'am.

Q Did he freely give you information about Fredel Williamson?

A Yes, ma'am.

Q Now, have you examined some of the physical evidence in this case, the items taken from the vehicle?

A Yes, ma'am.

Q And did you see numerous exhibits with the name Fredel Williamson on them?

A Yes, ma'am.

Q As well as that, have you received independent information that there were two individuals in Atlanta waiting on this shipment of cocaine from Fredel Williamson?

A Yes, ma'am.

Q And was that provided to you by two witnesses in Atlanta?

A Yes, ma'am.

MS. FOWLER: Your Honor, rather than go into the statements, I think all we have to establish is there is some corroborating information and that can be in the form of paperwork, and we would not take the time, the Court's time to go through all the context of what he told Agent Walton.

THE COURT: I'm going to let Mr. Silver cross examine him and get into whatever he wants to.

[Tr. 134] MS. FOWLER: Your Honor, we previously provided Mr. Silver a summary of everything that he told Agent Walton.

BY MR. SILVER:

Q Agent Walton, what time was it that you talked with Reginald Bernard Harris?

A As I recall, it was in the early evening hours or late afternoon hours, sometime after 5:00.

Q Sometime after 5:00 on what day?

A The 26th of March.

Q And how long had he been in custody at that time?

A It is my understanding that the traffic stop occurred at approximately 10:55, between 10:30 and 11:00 o'clock, the same day, that morning, and he was taken into some type of full custody shortly after the cocaine was discovered. I suspect sometime shortly after 11:00 that morning.

Q Do you know who talked with Mr. Harris between the time that he was arrested at approximately 10:55, and the time that you got around to talking to him at approximately 5:00 p.m. on March the 26th.

MS. FOWLER: Your Honor, we object to the relevance. We are not offering anything he made to any other agents or any other witnesses, and we contend that is completely irrelevant as to agent Walton's testimony. We are not offering that, that is not before the Court. It is not going to be offended into evidence and it has no bearing on [Tr. 135] what the Court is looking at. That is, whether there are any corroborating circumstances to Harris' statement.

THE COURT: Mr. Silver, what do you say?

MR. SILVER: Judge, they must demonstrate, as I understand the case that I read, they must demonstrate that this statement was given freely and voluntarily without the threat of punishment or hope of reward, et cetera. And this man was held, by this officer's own statement, on testimony, this man was held for approximately six and one half hours before he had an opportunity to talk to him. So he doesn't know what, if anything, anybody said. Someone could have said to him, you know, "You should

cooperate and they are going to give you a gold metal on the courthouse grass."

THE COURT: Well, I'm going to let you ask the question. I'm going to tell you, though, that I'm not going to assume a negative. I mean, assume a positive from a negative, because he cannot say under oath that someone else didn't promise him the moon, that probably somebody did promise him the moon. I mean, that would be—I'm going to allow the question.

BY MR. SILVER:

Q What question did you ask Mr. Harris concerning whether or not he had been made any promises concerning his cooperation, by any other agent or law enforcement officer?

A I don't recall having asked him any question like [Tr. 136] that.

Q So, how can you conclude that this statement and cooperation that he gave you was freely and voluntarily given?

A The one he gave to me?

Q Yes, sir.

A There was certainly no duress or coercion or anything of that nature on my part during the time that I took the statements from him.

Q Well, this was on the telephone, wasn't it?

A No, sir.

Q This was in person?

A Yes, sir.

Q And during that period of time you don't know what happened in that, roughly speaking, six and a half hours from the time he was arrested, until the time you talked with him?

A I don't know all the things that may have happened to him. I talked to him on the telephone one time prior to the time that I talked to him downstairs in the Marshal's Service office.

Q And did you ask him whether or not there had been any threats made against him?

A No, sir.

Q Did you ask him whether or not there had been any promise of hope of reward extended to him?

[Tr. 137] A No, sir.

Q Did you determine whether or not he had been kept in duress?

A Nothing of that nature was ever brought to my attention and I made no inquiry of that.

Q Did you determine whether or not he had been allowed to consult with an attorney?

A During the first conversation, or the second one?

Q Either one or both, sir?

A In the first conversation I made no attempt to discover that. In the second conversation I asked him specifically if he wanted an attorney here, or present while I was talking to him.

Q And what did he say at that time?

A He said, "No, sir."

Q And didn't sometime later in that interview he tell that you he did want an attorney?

A Yes, sir.

Q At what point in time during this discussion did he tell you he wanted an attorney?

A In the conversation that we had downstairs?

Q Yes, sir.

A At the very end of the conversation.

Q At the very end?

A Yes, sir.

[Tr. 138] Q Was any part of this discussion that you had with Mr. Harris, was any part of it recorded electronically?

A No, sir.

Q Was any part of it recorded in writing and subsequently signed by Mr. Harris?

A He wouldn't provide a statement, a written statement, no, sir.

Q Mr. Walton, what is the significance of the fact that Harris asked you whether or not the conversation was being recorded?

A During the telephone conversation that I had with him?

Q Yes.

A I have no idea that was in his mind.

Q You told him the conversation was not being recorded?

A I told him that I was certainly not recording it and that I had no knowledge whether or not the Dooly County Sheriff's Office was or was not.

Q Did you obtain such knowledge whether or not Dooly County Sheriff's Office recorded it?

A I was told that there was no tape recording or recording of the conversation that I had with him made by Dooly County.

Q Do you know of any statements that Special Agent Stephens made with reference to Mr. Harris' willingness to assist in the investigation, what statements Mr. Stephens [Tr. 139] could have made to Mr. Harris to induce that?

MS. FOWLER: Your Honor, we object. There is no showing he was present or overheard it or has any knowledge of it.

THE COURT: Well, I will let him answer the best he can. Objection overruled.

BY MR. SILVER:

Q Sir?

A I'm sorry, would you repeat that, please.

Q Yes, sir. I would say, Mr. Walton, what information were you given as to Special Agent Stephens, his interview with Mr. Harris as to whether or not Mr. Harris agreed to willingly cooperate and provide assistance to the investigation?

A My understanding is, from talking to Agent Stephens, is that he had a one-way conversation with Mr. Harris at the Dooly County Sheriff's Office and told him



that if he wished to cooperate, that he would be put in touch with either myself or a DEA agent or an Assistant United States Attorney who could explain to him what cooperation meant and what in turn he might receive to his benefit for that, and he was—

Q I'm sorry?

A He was subsequently put in touch with me by telephone, at his request.

Q What promises did the agent make as to what reward [Tr. 140] Harris would receive for cooperation in this case?

A It is my understanding Agent Stephens provided him with no promise of any reward of any type for his cooperation.

Q Didn't Agent Stephens tell Harris that if he cooperated, that it would be documented on his behalf and relayed to the Assistant United States Attorney that would be handling this matter?

A I believe he did say that, as well as myself having said the same thing when he arrived here.

Q What does that mean? Does that mean you are going to give this information, and doesn't that normally dissolve itself into lenient treatment on behalf of the Assistant United States Attorney's Office?

A No, sir. I think it is exactly what it says.

THE COURT: What was the statement?

MR. SILVER: Judge, that Agent Stephens relayed to Harris that Harris' cooperation in this matter would be documented for his behalf and relayed to the Assistant United States Attorney that would be handling this matter.

THE COURT: All right, who is Agent Stephens, again?

MR. SILVER: He is the gentleman that just previously testified, Judge, in this case.

THE COURT: That's right. And he is the GBI Agent?

[Tr. 141] MR. SILVER: Yes, sir.

THE COURT: And he had interviewed Harris before Walton?

MR. SILVER: Yes, sir, he did, sir.

THE COURT: And you knew about that, you knew that he had told him that?

THE WITNESS: No, sir, I didn't know that at the time I talked to Agent Stephens on the telephone from my office in Columbus to Agent Stephens at the Dooly County Jail.

THE COURT: When did you find out that he had told Harris that this would be taken down and passed on to the U.S. Attorney's Office?

THE WITNESS: That he had actually told him that?

THE COURT: Yes.

THE WITNESS: It was sometime later, Your Honor.

THE COURT: After you talked to Harris?

THE WITNESS: Yes, sir.

THE COURT: Okay.

THE WITNESS: If I may, Agent Stephens is somewhat knowledgeable of our procedures, sir, federal agents' procedures in that regard, and he may very well have done that.

THE COURT: Okay. Let's move on.

BY MR. SILVER:

[Tr. 142] Q And finally, Mr. Walton, at any time during this interview that you were having with Mr. Harris did he tell you that he wanted to stop the interview and confer with counsel?

A Yes, sir.

Q And at what point in time was that?

A At the very end of the interview.

Q And what information had you gleaned prior to that?

A From Mr. Harris?

Q Yes.

A That he had traveled to Fort Lauderdale, Florida on or about the 22nd or 23rd, as I recall, of March, to



attend a wedding or a funeral, and/or a funeral, of a friend of Fredel Williamson's in Fort Lauderdale. He told me that the cocaine was arranged for, the acquisition for the cocaine was arranged for by Fredel Williamson in Fort Lauderdale; that the cocaine belonged to Fredel Williamson; that he was supposed to take it back at Atlanta, Georgia and deposit it in a dumpster located behind a service station and simply to depart, someone was supposed to come pick it up after that.

Q Was that the first thing he told you, or the second thing he told you? Didn't he first tell you something about a Cuban?

A During our, during the telephone conversation he may have mentioned a Cuban, but he did tell me that he, he first [Tr. 143] told the police, as I recall, or told us that, told me that he had been playing basketball and had, after doing so, had gone to his motel room and laid down, and that he got up, excuse me, that his luggage was already in his car parked in the parking lot. He said he got up, he later changed that, said got up after playing basketball, took his luggage down to the car, that he didn't have a key to the car, the car was open, that he opened the trunk with an opening device in the glove box in the interior of the car, and when he opened the trunk, that he saw the cocaine in there with a note attached that had been left there by a Cuban whose name he couldn't provide at the time, a Cuban subject that he had seen with Fredel Williamson in Atlanta before, and with instructions on that note from the Cuban to go to a pay telephone and call a number that appeared on the note. He said he did that and after doing so, destroyed the note.

Q And who did he make that statement to?

A He made that statement to me.

Q He made that statement to you? Had he previously made it to some other law enforcement officer?

A As I understand, he did make that statement or something similar to that, yes, sir.

Q To another law enforcement officer?

A As I recall, yes. I would have to check my notes, but as I recall, it was something to that effect, a story similar [Tr. 144] to that, I guess.

Q And that was prior in time to the, to your second conversation. Is that correct?

A (No Response).

Q I'm looking for a sequence of events.

A Yes, sir. I'm having a difficult time recalling. I'm not clear in my mind that he did make those statements to other officers, but he did make the statements to me and the Marshal's Service downstairs. The only statement he made to me prior to that, in the telephone conversation, very brief conversation I had with him on the telephone, was that he was supposed to take the cocaine to Atlanta, be there by 10:30 that night, and that it belonged to Fredel Williamson.

Q And do you know, Mr. Walton, at what point in time was all of this information obtained? If he asked for counsel and the right to confer with counsel, at what point in time did he make that request? Do you have anything to document a point in time?

A A point in time for the time he provided the information, or the time—

Q Yes, sir.

A Or the time he requested an attorney?

Q From the time he provided you the information, at what point in time did he request an attorney?

A Are you talking about the telephone conversation [Tr. 145] information?

Q No, sir. I'm basically looking for when did he say that he wanted to talk to the attorney?

A He made that statement to me at about, I would say sometime after 6:00 in the evening.

Q And you had been talking to him, roughly speaking, 30 minutes or an hour at that point?

A Depending on the exact times, I would say the entire conversation between Mr. Harris and myself was

less than an hour's duration, and that statement by Mr. Harris terminated the conversation between Mr. Harris and myself.

MR. SILVER: Thank you, Mr. Walton.

MS. FOWLER: Just briefly, Your Honor.

THE COURT: All right.

BY MS. FOWLER:

Q Agent Walton, his requesting a lawyer came after he talked with his stepfather. Is that correct?

A According to Mr. Harris, that's who he spoke to on the telephone, yes, ma'am.

Q In your presence, you overheard Reginald Harris' end of the conversation?

A That's correct.

Q When he ended that conversation, is that when he told you he wanted a lawyer?

A Yes, ma'am stated he no longer wished to cooperate, [Tr. 146] wouldn't sign any documents, any forms.

Q Did you quit questioning him at that point?

A Abruptly. It stopped and it was over.

Q Now, while he was talking to you, did he tell you he was scared of Fredel Williamson and other people involved in this?

A He stated he was scared not only for himself but for his mother, frightened that they would be, either he or his mother would be killed, that Williamson knew where both he and his mother resided, they lived together.

Q He lived with his mother?

A According to Mr. Harris, yes, ma'am.

Q And did he complain to you about any, any agent having threatened him or any deputy having harmed him in any manner?

A No, ma'am.

Q His only fear was to Fredel Williamson and the other people related to the drug conspiracy, is that correct?

A The only fears he expressed to me, yes, ma'am.

MS. FOWLER: One moment, Your Honor. Nothing further, Your Honor.

THE COURT: Anything further, Mr. Silver?

MR. SILVER: Nothing further, Judge, thank you.

THE COURT: All right. It is the ruling of the Court that the necesasry corroborating circumstances as spelled out in the case of United States versus Robinson, 635 [Tr. 147] F 2nd 363, have been met by the Government. It is clear to me that Agent Walton read him his Miranda rights. He was in custody. However, it does not appear that there was any coercion. The fact he had been in custody for six or seven hours does not give this Court any concern. The Court notes that he was in custody here in the federal courthouse in Macon, and this Court knows that the facilities here and the way prisoners are treated in this courthouse generally comply with all aspects of requirements of the various Supreme Court decisions, and so the presumption is that he was not under any, as far as I'm concerned, as far this Court is concerned, under any coercion or under such circumstances that he would not give a voluntary statement.

For that, and just based on the testimony of the agent in total, and there is a record here of it in case any appellate court ever needs to look at it, this Court finds that the corroborating circumstances clearly indicate the trustworthiness of the statement. So, when we begin in the mornings, I will, we will begin, I assume, with this agent's testimony.

Anything further before we adjourn for the day?

MS. FOWLER: Not for the Government.

MR. SILVER: Judge, on behalf of the Defendant Williamson, in reviewing that information which we have obtained from the Government by way of discovery, we are [Tr. 148] advised here that apparently Special Agent Stephens initiated the telephone call to Special Agent Wal-



ton from the Dooly County, Georgia Sheriff's Office, and that there is some considerable time elapsed before Mr. Harris was transported to the United States Marshal's Office in Macon, Georgia.

In addition thereto, Judge, it advises us that at the conclusion of the conversation between Harris and Special Agent Walton, Special Agent Walton again spoke with Special Agent Stephens and had, and informed him that Harris had provided the stated information regarding the controlled delivery and requested Stephens to transport Harris to the United States Marshal's Service office in Macon, Georgia. Special Agent Stephens said he would in fact transport Harris to Macon, and that he had monitored Harris' portion of the telephone conversation with Walton.

So apparently, Judge, a considerable period of time elapsed before he was actually transferred to the Marshal's Office in Macon, Georgia.

THE COURT: Well, the thing the Court is relying on is the statement was given here at the Marshal's Office in Macon, at the federal courthouse. The Court, when it comes to circumstances, and let me make it absolutely clear, the Court does not assume that the Dooly County Sheriff's Office would be any less sensitive to Mr. Harris' constitutional rights insofar as any statement or confession [Tr. 149] that is given, but the Court is more familiar with the, with the procedures here at the courthouse in Macon than it is in the Sheriff's Office in Dooly County. But it appears to me that the relevant time period is here, when he was here and where he was here and what was done when this statement was made to Agent Walton. So, the ruling will stand.

\* \* \* \*

[Tr. 174] DONALD E. WALTON,  
after being first duly sworn, testified as follows:

# DIRECT EXAMINATION

BY MS. FOWLER:

Q Tell us your name, please, sir.

A Donald E. Walton.

Q Mr. Walton, how are you employed?

A As a special agent for the Drug Enforcement Administration.

Q And, Agent Walton, how many years of law enforcement experience do you have?

A About nine years.

Q And how many years of experience do you have with the Drug Enforcement Administration?

A Going on six, seven.

Q What are your duties with the Drug Enforcement Administration?

A To investigate violations of the federal narcotics laws, specifically Title 21 of the United States Code.

Q Mr. Walton, I direct your attention to Sunday, March 26th, 1989. Did you receive a call in reference to this case on that day?

A Yes, ma'am, I did.

Q And did you have a conversation on the phone with a Reginald Bernard Harris?

[Tr. 175] A Yes, ma'am.

Q Do you recall approximately what time that was?

A It was around the noon hour of the 26th.

Q And where were you located when that conversation took place?

A At my office in Columbus, Georgia.

Q And to your knowledge, where was the person you were talking to located?

A At the Dooly County Sheriff's Office in Dooly County, Georgia.

Q Now, what conversation did you have with Reginald Bernard Harris.

MR. SILVER: Objection, if Your Honor pleases, and I would like to go into the grounds, outside the jury, please, Judge.

THE COURT: Why don't we step in chambers, they have been up and down enough.

MR. SILVER: That will be fine, sir.

THE COURT: You can stand and stretch or whatever.

(Brief recess).

(Chambers Conference).

THE COURT: Mr. Silver.

MR. SILVER: Judge, I would renew my objection to Agent Walton's testifying in this case, based upon that which we went through yesterday. And in addition thereto, Judge, I [Tr. 176] would also object to the testimony of Agent Walton with reference to that which he now attributes to Mr. Harris, on the grounds that that is hearsay as to Mr. Williamson. And, Judge, it is made after Mr. Harris is in custody, so that means that the conspiracy, if there was one, terminated at the time that he was taken into custody, and so Walton's testimony may be good against Harris, but it is not against Williamson.

THE COURT: Mrs. Fowler?

MS. FOWLER: Your Honor, we went through yesterday immunizing Harris, and he went in dead time and the Court found—

THE COURT: I have already ruled.

MS. FOWLER: You have already ruled.

THE COURT: I ruled on that. The narrow question here is, Mr. Silver's position is that obviously when Mr. Harris was arrested, that the conspiracy terminated.

MS. FOWLER: Yes, sir.

THE COURT: And therefore, anything, I'm just posing the question, I said therefore, anything he said

after the conspiracy terminated is inadmissible under the rule that it was not made during the pendency of the conspiracy. Now, how do you respond to that?

MS. FOWLER: It is not offered as being admitted during the pendency of the conspiracy. I agree the [Tr. 177] conspiracy had ended when one of them is arrested, as to the one arrested. It doesn't necessarily end as to the others. It is offered under the unavailable exception, and the Court has gone through all the predicates of reliability and the Court has ruled that its coming in under that unavailable exception to the hearsay requirement, and the cases—

THE COURT: I know, but that is not the question that I have already ruled on. I want to know, does it make any difference that he, that the testimony that is offered was made, the conversation was had after the conspiracy had terminated? Does that make any difference?

MS. FOWLER: No, sir.

THE COURT: Why?

MS. FOWLER: Because it is in under a different rule. We are not offering it during the pendency of the conspiracy. We are offering it under the unavailable.

THE COURT: Well, I don't think you understand what I'm saying.

MS. FOWLER: The Court—

THE COURT: My feeling is this, is that it is, although the conversation, the interview was, with Agent Walton and Mr. Harris, was made after the conspiracy terminated, that it involved the gist of the conversation, it involved—the gist of the conversation dealt with things that happened during the pendency of the conspiracy. [Tr. 178] Therefore, he can recount what Williamson may have done or the two of them may have done together or planned together or did together at a time before the arrest. Anything he says about Williamson, that happened after the termination of the conspiracy, if there is any such thing, and as I recall what the agent said, it all



dealt with that part that, that whatever they did in planning and so forth. That is what, I think Mr. Silver's motion was that the mere fact that a conspiracy had terminated, means that anything he says after the termination of the conspiracy is inadmissible. That is your point, isn't it, Mr. Silver?

MR. SILVER: Yes, Judge. It is admissible as to Mr. Harris.

THE COURT: But not against any other?

MR. SILVER: Yes, sir.

THE COURT: I don't agree with you. I think it is admissible against Harris and Williamson, so long as Harris is testifying as to what involvement Williamson had during the pendency of the conspiracy. So, I'm going to let it go. I overrule the objection.

MR. SILVER: Thank you, Judge.

THE COURT: Your exception is preserved.

(Chambers Conference Concluded).

THE COURT: You may proceed.

BY MS. FOWLER:

[Tr. 179] Q Agent Walton, did you have a conversation with Reginald Bernard Harris on the phone on March 26, 1989?

A Yes.

Q And I believe, since we have been out and come back in, you said you were in your office in Columbus and he was, as you understood it, at the Dooly County Sheriff's Office?

A Yes, ma'am.

Q What did he tell you, please, sir, and what did you ask him?

A I was attempting to gather information from him at that point necessary for myself and other agents involved in the investigation to conduct a controlled delivery of 19 kilograms of cocaine that had been seized from a car that he was driving.

Q Tell us what a controlled delivery is.

A A controlled delivery is exactly what is says. It is a delivery of cocaine seized from a person or persons, that is delivered or attempted to be delivered in a controlled situation by agents or police officers of some type to unsuspecting persons who would have normally retrieved it, or received it, I should say, at which time, of course, they would be arrested, too.

Q All right. And what specifically did you ask him about a controlled delivery?

A Whether or not it was possible. In a very brief [Tr. 180] conversation he stated that he had been to Fort Lauderdale, Florida; had obtained 19 kilograms of cocaine from an unidentified Cuban subject in Fort Lauderdale; that the acquisition for the cocaine had been made by Fredel Williamson of Atlanta; and that the cocaine was to be delivered that night, the 26th, at 10:30 to a dumpster located behind a service station on Redan Road in the Atlanta area.

Q And did he identify for you who the cocaine belonged to?

A He stated the cocaine belonged to Fredel Williamson.

Q Once he told you that, what did you do?

A I asked him to return the telephone to GBI Agent Fred Stephens who was there, and instructed Agent Stephens to transport Mr. Harris to Macon here, to the United States Marshal's Service office downstairs, where we would gather and begin appropriate planning for the controlled delivery with which Mr. Harris agreed to do.

Q Okay. And did Agent Stephens agree to bring him to Macon?

A He did.

Q And did you then come to Macon?

A Yes, ma'am.

Q So, did you meet in person with Reginald Bernard Harris?

[Tr. 181] A Yes, ma'am. Later that evening, or during the early evening hours of the 26th here in the Marshal's Service office downstairs.

Q I show you the drivers license of Reginald Bernard Harris that has been admitted as Government's Exhibit 2. Is that the same Reginald Bernard Harris that you met with?

A Yes, ma'am.

Q And did you have an in person conversation with him, one on one, in person?

A Yes, ma'am, I did.

Q What, if anything, did you advise him as to his rights?

A I did in fact do that. I advised him of his constitutional rights as provided me on a form issued to me by the Drug Enforcement Administration.

Q Are those commonly known as his Miranda rights?

A Yes, ma'am.

Q And did he indicate a willingness to speak to you?

A He did.

Q And what did he tell you about having rented the car, please, sir?

A He stated that he had rented the car just a few days earlier, prior to making the trip from the Atlanta area to Fort Lauderdale, Florida on the 22nd or 23rd of March, and that after doing so, had traveled to Fort Lauderdale to [Tr. 182] attend a wedding and/or a funeral of a friend or friends of Fredel Williamson, and that Fredel Williamson and his girlfriend, or his mother, named Wanda, would also be in the Fort Lauderdale area, and he included his name on the rental contract for the automobile, which we had.

Q That who had included whose name?

A That Mr. Harris had included Fredel Williamson's name on the rental contract because he was going to be in the Fort Lauderdale, Florida area with him.

Q Because who was going to be in Fort Lauderdale?

A Because Mr. Williamson was going to be in Fort Lauderdale.

Q With Mr.—

A With Mr. Harris.

Q All right. And what, if anything, did he tell you about the delivery of the cocaine to Atlanta, the controlled delivery?

A He stated that it was to be delivered by him to a dumpster, a trash bin, if you will, at a, in the parking lot of a Crown service station on Redan Road in the Atlanta, Georgia area at 10:30 on the night of the 26th, and that he was simply supposed to deposit the cocaine in the dumpster, return to his car and depart the area and was not supposed to await the arrival of anyone to pick it up.

Q And what did he tell you about where he had gotten the [Tr. 183] cocaine?

A He stated he had gotten it or received it from an unidentified Cuban male subject, an acquaintance of Fredel Williamson, in Fort Lauderdale who had placed the cocaine in the trunk of the rental car and left some instructions attached to the cocaine to telephone for further instructions on the delivery of the cocaine, what to do with it.

Q Okay. And at that point did you attempt to make plans for the controlled delivery?

A Yes, ma'am. When I realized we had considerable time, that being that conversation having occurred during the early evening hours of the 26th and the delivery time the same day was some four or five hours later, at 10:30 p.m., there was enough time to amass the number of agents needed for such an attempt of a controlled delivery, and I got up from the desk where I was seated in the Marshal's Service and started toward the door to in fact do that, and Mr. Harris stopped me and explained that, "I can't let you go, I can't let you go up there." He said, "That's not true," and stopped me from amassing the agents for the delivery.

Q Okay. Were you in a position to observe him when he was telling you this?

A I was seated right in front of him, or had gotten up from the desk and was walking to the door.

Q Would you stand and show us how he told you that, and [Tr. 184] what, if any, hand signals he used?

A He got out of his chair, he was seated in a chair next to the desk, and he got out of the chair and walked, took a half step toward me as I was approaching the door and just said, you know, "I can't let you do that," threw his hands up and said "that's not true, I can't let you go up there for no reason."

Q When he told you that, what did you do?

A We reconvened for another short conversation there regarding what the truth of the matter was with respect to the ownership and the delivery process of the cocaine, and Mr. Harris stated that what he had previously stated about a delivery to a trash dumpster was all false and that the information about the Cuban was false, the telephone conversation and the note attached to the cocaine was false, and that the cocaine was being delivered by him to Fredel Williamson in Atlanta who, at the time Mr. Harris was stopped on the interstate in Dooly County, was traveling in front of him in another rental car, of Mr. Harris in a Lincoln Continental, and after being stopped, that Mr. Williamson continued up the interstate northbound, made a U turn, came southbound on the interstate, made another turn and continued northbound behind or past the location of the stop and observed Mr. Harris stopped by the trooper, excuse me, by the deputy, with the trunk of the automobile up.

[Tr. 185] Q So, what he told you was that Fredel Williamson—

MR. SILVER: Objection, if Your Honor please, to the United States Attorney summarizing what she believes to be this witness' testimony.

MS. FOWLER: We will withdraw that, Your Honor.

THE COURT: All right, move on.

BY MS. FOWLER:

Q Agent Walton, what did he tell you about whether or not Fredel Williamson knew he had been stopped?

A He stated that was the reason for stopping me from gathering the agents necessary for the delivery, because Mr. Williamson had observed him being stopped and subsequently with the trunk of the car up, where the 19 kilograms were located, and that was the reason that a controlled delivery was impossible, that Mr. Williamson already knew that it had been seized and that he had been arrested.

Q And what, if anything, did he tell you about the arrangements for securing the cocaine and the arrangements for transporting the cocaine?

A That that had been made, or the arrangements for the acquisition and the transportation had been made by Mr. Williamson.

Q Now, did he make any phone calls while you were there?

A Yes, ma'am, he made two.

Q And did you overhear his end of the conversation? [Tr. 186] A Mr. Harris', yes, ma'am.

Q And who did he call?

A He first telephoned his sister in Atlanta to obtain a telephone number for—

MR. SILVER: If Your Honor please, I will object to that, because of the grounds previously stated in the conference in which the Court has issued certain directions concerning testimony in this matter. And also, Judge, that this would be, if I understand him correctly, this is what now amounts to, he is listening to only one side of a conversation. He doesn't know what the individuals on the telephone said. He only knows what he heard Mr. Harris say.

MS. FOWLER: Your Honor, that is all we are asking, what is the side he heard.



THE COURT: I'm not sure I understand the first part of your objection, Mr. Silver. Do you want to approach the bench?

MR. SILVER: Yes, I would, Judge.

(Bench conference).

MR. SILVER: Maybe I'm wrong, but I thought I heard the Court say that his testimony should cease at the time that he had finished explaining what the involvement was during the arrangements, as you have indicated, the actual plan, as you have indicated, not anything that happened after the arrest. That is what she seeks to go into now.

[Tr. 187] MS. FOWLER: What I'm seeking to show, Your Honor, he turned to the agents and said, "My sister said Fredel Williamson has already called and told them I have been caught with cocaine," it is what Harris turned and told the agent. The agent obviously didn't hear the other end of the conversation, but it corroborates what he is saying about Harris, excuse me, Williamson being ahead of him. Williamson had already made it to Atlanta and called his sister before he had time to even tell his family that he had been stopped with the cocaine, and Williamson had already told them.

THE COURT: I tell you what, back up a little bit and start at the beginning of this contested testimony and let me hear it again. I'm not going to send the jury out. I can tell them not to, if I feel like it's inadmissible, I will tell them to put it out of their mind. I'm convinced they can do so. So let's back up and do it that way. I will rule after I hear what she is going to say.

(Bench Conference Concluded).

BY MS. FOWLER:

Q Agent Walton, did Mr. Harris have a telephone conversation, you say he had two conversations?

A Yes, ma'am.

Q And you obviously couldn't hear the other end of the conversation. Is that right.

THE COURT: When was this conversation?

[Tr. 188] Q When was the conversation?

A It was after he had provided me the information regarding the attempted delivery and subsequently the truth of the matter.

Q What time, what date?

A It was the 26th, excuse me, early evening hours of the 26th.

THE COURT: Where were you?

THE WITNESS: In the Marshal's Service office downstairs.

THE COURT: Was that the original conversation, the interview?

THE WITNESS: The entire conversation lasted no more than 20 to 30 minutes, at the most.

THE COURT: Was there any break between, was this all part of the first interview you had with him?

THE WITNESS: Person to person interview, yes, sir. I had one prior telephone, very brief telephone conversation with him while he was still at the Dooly County Sheriff's Office.

THE COURT: That was earlier that day?

THE WITNESS: Yes, sir.

THE COURT: But your interview with him was here around 5:30 or so on the evening of Easter afternoon?

THE WITNESS: Yes.

[Tr. 189] THE COURT: And that is when you tried to set up this controlled delivery, all of what was done during this interview in the Marshal's Office?

THE WITNESS: Yes, sir.

THE COURT: And then he changed his mind about that, about the controlled delivery?

THE WITNESS: About the facts that he had originally stated, which were false.

THE COURT: Then what happened after he says, "That's not true, I can't let you go up there"?

THE WITNESS: He told me that it was impossible and the reasons for the impossibility of the controlled delivery. He requested at that point he be allowed to make a telephone call, which at that point, knowing the controlled delivery was no longer possible, I had no objection to him making a call.

THE COURT: So he made a phone call?

THE WITNESS: Yes, sir, he made two of them.

THE COURT: You sat there and overheard them?

THE WITNESS: Absolutely.

THE COURT: You overheard one end of the conversation, you heard what he said, you didn't hear what the others said?

THE WITNESS: That's correct.

THE COURT: All right. Now, that is where you are.

[Tr. 190] BY MS. FOWLER:

Q Who did he tell you he was calling the first time, Reginald Bernard Harris?

A Prior to the conversation, the first telephone call he made, he told me he needed to call or had to call his sister in Atlanta to get a telephone number where he could call his mother in Ohio.

Q Okay.

A And after the conversation, we discussed the contents of the conversation that he had with the person on the phone.

Q And what did he tell you his sister said?

A He further confirmed the impossibility of a delivery, in that his sister had informed him, somebody, a female, an unidentified female caller had already called her or called the house or called the number he called where his sister was and told her he had been arrested for drugs, Mr. Harris, that is.

\* \* \* \*

[Tr. 215] I believe that takes care of that. The next question is the statement Reggie Harris made after custody, which implicated the defendant. I read the case that you, I believe it is U.S. versus Harrell. Mr. Silver, have you read the Harrell case?

MR. SILVER: Yes, I have, Judge.

THE COURT: Do you want to comment on it?

MR. SILVER: Judge, what the Court did was find that the playing of the tape was permissible and that it could be received in evidence, and they based that on two points. One being that the declarant who was on trial made the statement against interest, as I read this decision.

[Tr. 216] THE COURT: I agree with you so far.

MR. SILVER: And secondly, that they also allowed it on the grounds it was a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy, and that has been my position all along, Judge, that this statement was not made during the course—

THE COURT: Well, on page 1526—

MR. SILVER: Yes, sir, I'm reading that. It says, "We need not consider whether 801(D)(2)(E), the co-conspirator rule, applied here because we conclude that the evidence was admissible under the rule permitting the admission of a statement against interest. His admissions clearly were against his penal interest."

THE COURT: I'm making this observation to both of you. It is obvious to me that the Court is not saying in Harrell that these two other guys made any admission. I mean, you can't, they did not give this guy a proxy to make an admission for him. I think the admission is only against the one who made the statement, but the two people who were not quoted made no admission. Now, the Court then goes on to say they don't consider the co-conspirator rule. And then it goes on to say, "We are satisfied the trial court adequately instructed the jury as to the manner in which the tapes and transcripts should be used."



I don't get a whole lot of guidance out of it. [Tr. 217] Mrs. Fowler, what should I get out of this case?

MS. FOWLER: Your Honor, we do not contend whatsoever that the statements were made during the course of the conspiracy. Therefore, the co-conspirator exception to the hearsay rule is not before the Court. I think this case addresses what may be before the Court, and that is, in essence, what we are admitting is a confession of Reginald Harris that implicates a co-defendant after Harris' arrest.

THE COURT: All right, I understand, but is it required that this statement be made during the pendency of the conspiracy?

MS. FOWLER: No, Your Honor. It is a confession by Harris. It is after the conspiracy, and—

THE COURT: What about this 2nd Circuit case?

MS. FOWLER: Well, first of all—

THE COURT: Which says it has got to be during the pendency.

MS. FOWLER: Your Honor, it does have to be to come in as a co-conspirator statement, but we are clearly not offering it, we are telling the Court the conspiracy is over as to Reginald Bernard Harris. There is no way it is in pendency.

THE COURT: It is not coming in as a co-conspirator statement?

MS. FOWLER: That's correct, Your Honor.

[Tr. 218] THE COURT: It is not coming in as an admission by the defendant Williamson?

MS. FOWLER: No, it is not an admission by the defendant Williamson.

THE COURT: Then what is it?

MS. FOWLER: It is a hearsay exception under 804 B(3), and we have met the predicate and the Court has already ruled that in, because we have determined that Reginald Bernard Harris is unavailable (that is 804 back there, not 404) and is unavailable. I think we are talking about a Bruton problem. That is where a confession im-

plicates the party speaking, Mr. Harris and his co-defendant. And Bruton holds that extrajudicial statements of one defendant not otherwise admissible, and we fall within that category, we are otherwise admissible under 804 B(3). In other words, the discussion under the case we cite, which is the Harrell case, we contend falls squarely, that Bruton doesn't control and the co-conspirator exception doesn't control because the Court has already determined that we have met the requirements for the 804 B(3), unavailable and statement against interest.

THE COURT: As to—

MS. FOWLER: As to the whole statement.

THE COURT: As to Harris, as far as Harris is concerned, he is unavailable. It is a statement against his [Tr. 219] interest. I let it in as a co-conspirator statement. Now I am concerned that since, that when the statement was made, the conspiracy had ended, that this case, the one involving the Chinese defendant, that it, that it says no. Now you say it comes in under the Bruton decision.

MS. FOWLER: No, sir. I think I said, as I interpret Mr. Silver's objection, he says it's not a statement in furtherance of the conspiracy, and I agree with him totally. It is not offered under that exception. A statement must only be admissible under one hearsay exception, to come in. It doesn't have to meet all the—

THE COURT: Let me, I don't want to cut you off. Are you telling me it comes in under 804 B(3)?

MS. FOWLER: Yes, sir.

THE COURT: Let me read that again.

MS. FOWLER: And, Your Honor, in support of that, the discussion of the Harrell case is very similar to our case, where he implicates himself and other people, and it goes on to explain Bruton, which would otherwise keep that testimony out.

THE COURT: Bruton is a conspiracy case, right?

MS. FOWLER: Bruton is where one co-defendant, one co-defendant implicated another, and the Government tried—



THE COURT: I thought you just told me it wasn't a Bruton, we don't have a Bruton.

[Tr. 220] MS. FOWLER: We don't, and this case says why.

THE COURT: Which case is that?

MS. FOWLER: Harrell, page 1526.

THE COURT: Let me, let's take it one step at a time. 804 B(3) is a statement against interest. There is no statement by Fredel Williamson, so therefore under 804 B(3) it does not come in.

MS. FOWLER: Yes, sir.

THE COURT: The only way a statement can come in, as I see it, is a statement by Harris that implicates him as a co-conspirator.

MS. FOWLER: Your Honor, this case is just in opposition to what the Court just said.

THE COURT: All right, let's go over it slowly, I'm a slow learner. Where is it?

MS. FOWLER: It's at page 1526, United States versus Harrell, it starts with discussion, up at the top of the page.

THE COURT: Give me the language, the smoking gun language here.

MS. FOWLER: It says, "Appellant's complaint of introduction of a tape in which a statement by one defendant implicated one or more other defendants."

THE COURT: Who were not present.

MS. FOWLER: Right, who were not present at the [Tr. 221] table. They contend the trial court erred in denying motion to redact. The same motion was made on behalf of Mr. Harrell, who was also not there. They said that under Bruton, the Court should eliminate the names of the co-defendants.

Now, the trial court said that the statements were admissible under statements against interest, and obviously they didn't make those, they weren't there, we can tell that by them objecting, by the objection they made. Now, the Court goes on to say, recognizes Bru-

ton says that an extrajudicial statement of one defendant, such as Reginald Harris, not otherwise admissible, and that is italics, because that is the exception we are under, were not otherwise admissible.

THE COURT: In other words, since the co-conspiracy rule is, co-conspirator rule is not in effect.

MS. FOWLER: Bruton prohibits defendant's statement against others. We are talking about a 6th Amendment right to confrontation.

THE COURT: I understand.

MS. FOWLER: And the trial court admitted the exhibits under 804 B(3). Obviously the evidence was admissible under either rule, and that is where we qualify. Bruton does not control, because of the Bruton exception. And then it says, "We need not consider whether the [Tr. 222] co-conspirator rule even applies, because the evidence is admissible under the rule permitting the admission of a statement against interest."

THE COURT: That is, I understand that insofar as the guy who, the one who did the talking is concerned. But why does—

MS. FOWLER: He is talking about these other people.

THE COURT: Why does it say over here—

MS. FOWLER: What paragraph is that?

THE COURT: Page 1527, down on the right-hand column, next to the last.

MR. SILVER: Next to the last paragraph.

THE COURT: There is a Biggins case.

MS. FOWLER: That is whether the Court should allow a recording to be played. You see, Biggins discusses whether a recording should be played. The fifth line from the top of the page, on the right-hand column, 1527.

THE COURT: Okay. Well, I'm not completely satisfied. I'm going to, I don't have to rule now anyway. I will rule later. I have already let it in, but I have, I mean, the testimony is already in evidence and my deci-

sion is whether or not I should leave it as it is, or should I reverse my ruling. I want to get the jury back in here. I'm going to send my trusty clerk out, tell him to go to work on [Tr. 223] this thing. Is there anything else you want to say, Mr. Silver? I think we have probably done all we can do.

MR. SILVER: In the Court's opinion in Harrell, Judge, the Court here states on page 1526, it says, "The trial court admitted the exhibits under rule 804 B(3)," which is the statement against interest, "and under 801 (D)(2)(E), which is the statement by a co-conspirator of a party during the course and in furtherance of the conspiracy." I think it is clear what the Court says here. Your Honor's deliberation, as I have understood it, is the statements made after the conspiracy had terminated.

THE COURT: All right. One more word.

MS. FOWLER: Just briefly.

THE COURT: One more word.

MS. FOWLER: We are talking about apples and oranges. A statement made during the course of a conspiracy is separate and apart from an admission made after an arrest, and that is what we are talking about.

THE COURT: A rose by any other name is still a rose, and what we have here is some very damning evidence that is either going to come in or not going to come in and it doesn't really make a whole lot of difference what you call it.

MS. FOWLER: Well, the rule provides for what we produced, and the Court heard evidence on it yesterday under [Tr. 224] the 804 B(3), and the Court ruled it in. We contend that the 2nd Circuit case is not controlling, for two reasons. First of all, we have an 11th Circuit case that explains it, which is controlling.

THE COURT: The 11th Circuit says we don't consider the co-conspirator rule.

MS. FOWLER: Yes, sir, because it comes in under another. There is nothing that says it has to meet all the hearsay exceptions, and we are not offering it, we clearly say it is not.

THE COURT: You had two points. Give me the other one.

MS. FOWLER: The first one is we are not offering it under co-conspirator. The second is, 2nd Circuit law is not controlling in the 11th Circuit.

THE COURT: If one is clearer than the other, I'm going to follow the clearer one. I agree with you, the 2nd Circuit, if this is an 11th Circuit case on point, I shouldn't go to the 2nd Circuit, although I might add editorially that some of the finest judges in the country are in the 2nd Circuit.

MS. FOWLER: And if Your Honor please—

THE COURT: Second only to those in the 11th Circuit.

MS. FOWLER: If the Court determines that it has [Tr. 255] been improper for this witness to say those statements, then the Court must of necessity declare a mistrial, because there is no way they can remove what he has heard, what they have heard that Reginald Harris said about Fredel Williamson, and the Government will join in the motion with Mr. Silver, because I think that would be a burden no one could overcome in the 11th Circuit.

THE COURT: Well, we will take that up later. Bring the jury in.

(Jury returned to the courtroom).

\* \* \* \*

[Tr. 232] THE COURT: All right, I have this written down, because I want to be sure I say the right words. The ruling of the Court is that the statements made by defendant Harris to Agent Walton are admissible under 804 B(3), which deals with statements against interest.

First, defendant Harris' statements clearly implicated himself, and therefore, are against his penal interest.

Second, defendant Harris, the declarant, is unavailable.

And third, as I found yesterday, there are sufficient corroborating circumstances in this case to ensure the

trustworthiness of his testimony. Therefore, under United States versus Harrell, these statements by defendant Harris implicating defendant Williamson are admissible.

I do not totally understand the logic of the 11th Circuit. However, that is their logic and I am bound by it and I will follow it. That's the ruling of the Court. Bring the jury in.

### CROSS EXAMINATION

BY MR. SILVER:

[Tr. 233] Q Agent Walton, when was the first time that you talked with Reginald Harris?

A Sometime just after noon, between 12:00 and 1:00 on the 26th.

Q On March 26th, '89?

A Yes, sir, by telephone.

Q That is the first time you have talked with him?

A By telephone, yes, sir.

Q Had you met him in person any time prior to March 26th, '89?

A No, sir.

Q Describe Mr. Harris, please, to the Ladies and Gentlemen of the jury. How old is Mr. Harris?

A I believe he is 23 years old.

Q And where did he reside, if you know?

A In the Atlanta, Georgia area.

Q Do you know the street number, the address?

A I don't have it in front of me.

Q And was he married?

A No, sir, not to my knowledge.

Q Was he employed?

A No, sir, not to my knowledge.

Q Do you know how much schooling or education that he had?

A I believe I was provided that information. If I'm not [Tr. 234] mistaken, it was a high school education.

Q High school? Do you know whether or not he graduated from high school?

A I don't recall specifically, no, sir.

Q Do you know whether or not he had had any previous trouble with the law?

A Do I know that now, or did I know that when I talked to him the first time?

Q Either now or, either now or when you talked to him the first time?

A I didn't know then, and I don't believe he has a prior record, that I know of now.

Q I see. Now, did he give you any evidence, Mr. Walton, as to his personal reliability? Did he give you the names of any individuals that you could call to check him out to determine his personal reliability?

A No, sir.

Q Now, when you first talked with him, Agent Walton, what was his attitude? Did he appear to you that he was talking to you freely?

A Yes, sir.

Q And the first conversation you had with him was on the telephone?

A Yes.

Q And was that when he told you about that he had found [Tr. 235] the cocaine in the trunk of the car, and the story about the Cuban and all of that?

A In some words, yes, sir.

Q In some words? What do you mean by that?

A Not exactly as you stated it there.

Q Well, that's what I'm trying to get across. Did he make some statement, the first time he talked with you, that you later learned was not true?

A Yes, sir.

Q Okay. Then that's what I'm after. When did he make that statement to you that you later learned was not true?

A In a very brief or terse fashion during the telephone conversation at midday, and repeated that same



information in more detail during my personal interview with him in Marshal's Service office downstairs the same evening.

Q And he had also had opportunity to talk to other police officers before you were interviewed?

A Yes, sir.

Q And do you know whether or not he related that same story to them?

A I have not been told that that information was passed to anyone but myself.

Q Okay. Now tell, relate to the Ladies and Gentlemen of the jury what it was that he first told you.

A During the telephone conversation?

[Tr. 236] Q Yes, sir.

A He had requested of Agent Stephens, the GBI agent that was present at the Dooly County Jail, to contact me by telephone and have me gather what information would be needed, if possible, to attempt a controlled delivery of the 19 kilos. I spoke with him for a very short period of time. During that conversation he told me he had acquired the cocaine from an unidentified Cuban male subject in the Fort Lauderdale, Florida area. He told me he was to take the cocaine to the Atlanta area—

Q Let me interrupt you, if I could, please, Agent Walton, and I will try not to interfere with you, and I apologize to you and to the jury for interrupting you. When he gave you this, this unidentified Cuban male subject, did he give you the name of that individual?

A He provided—not at that time. He provided me with a name later. The unidentified Cuban male subject is my language. He simply said he didn't know the name of the person that, that he believed was Cuban, who had put the cocaine in the car.

Q But did he eventually give you the name relating to that unidentified male Cuban?

A He provided me with a name, yes, sir.

Q What was the name that he gave you?

A Shawn.

[Tr. 237] Q Shawn?

A Yes.

Q And what other information did he give you about Shawn when he told you about this particular incident? What else did he tell you about Shawn?

A That he was an associate of Fredel Williamson and that he had met him before with Williamson in Atlanta.

Q That he had met Shawn with Williamson, is that correct?

A I don't recall specifically if it was Shawn, but it was concerning the conversation regarding a Cuban subject that had placed the cocaine in the car, according to Mr. Harris.

Q Did he identify Shawn as being a Cuban, or did he identify Shawn as being a Bahamian?

A There was discussion at one point between Mr. Harris and myself as to whether or not he could distinguish the difference between a Cuban and/or a Bahamian or Jamaican, that type. And I don't recall specifically if Shawn was a Bahamian or Jamaican or Cuban, or what. At that moment, for my purposes, it was, it was unimportant.

Q And did he tell you where he believed Shawn lived?

A He may have, but I don't recall.

Q Did he tell you that he believed that Shawn lived in the Fort Lauderdale, Florida area?

[Tr. 238] A He could very well have said that, either Fort Lauderdale or Atlanta. I believe he did say Fort Lauderdale.

Q And, Agent Walton, how much time did it take Mr. Harris to relate these circumstances to you in this manner that you have described?

A A matter of two minutes, three minutes.

Q And you believed him, didn't you?

A I don't know that that's what I believed. It was enough information for me to act on.

Q Yes, sir. And in fact, you were going to act on it?

A I did act on it, yes, sir.

Q And then how much time elapsed before he got around to telling you, "No, disregard what I have said to you, don't go with that," or don't do that?

A How much time elapsed from the time he made those statements to me in the telephone conversation?

Q Yes, sir.

A The same information again in more detail was related to me downstairs here, and after having made those statements here, when I got up to leave the room to set the delivery in motion, his response was immediate, that it was untrue.

Q And how long did it take him to get around to telling you that what he had been telling you was untrue?

A (No Response).

Q How long was that interview before he said to you, [Tr. 239] "Look, what I have been saying is not true"?

A The personal interview?

Q Yes, sir.

A The entire conversation between Mr. Harris and myself lasted no more than 20 to 30 minutes, I suppose. A lot of that time was me talking to him. And again, when he clarified the truthfulness of that information, it came at the very end of the conversation when we were about to put the delivery in motion.

Q All right, sir. And did he also tell you, during that same period of time, Agent Walton, that he had obtained the approximately 19 kilograms of cocaine in Fort Lauderdale?

A Yes, sir.

Q He told you that?

A Yes, sir.

Q And he also told you this Cuban male subject had placed the cocaine in the trunk of his automobile. Did he not tell you that?

A He stated he thought that was how it got there, yes, sir.

Q And did he also tell you at that time that the cocaine was to be delivered by him, Harris, to a trash dumpster located behind a Crown service station on Redan Road in Atlanta, Georgia?

A Yes, sir, he did.

[Tr. 240] Q He told you that?

A Yes.

Q And he was supposed to do this by 10:30 p.m. that night?

A Yes, sir.

Q Was it reasonable, Mr. Walton, Agent Walton, he could have gotten from Dooly County, Georgia to Atlanta, Georgia in the Redan Road area in the time remaining from the hour he was arrested, until the time designated to be in Atlanta?

A It would have been about ten and a half hours. I suspect he could have driven much farther.

Q That was ample time for him to do what he said he had to do?

A Yes, sir.

MR. SILVER: One second, please, Judge.

Q Agent Walton, you indicated in your direct examination that Mr. Reginald Harris also made a statement that Mr. Williamson was proceeding in another rental car. Did he tell you where Mr. Williamson rented that other car?

A No, sir.

MR. SILVER: Thank you, Judge. I have no other questions of the witness.

MS. FOWLER: Your Honor, might we briefly approach the bench?

THE COURT: Yes.

[Tr. 241] (Bench conference).

MS. FOWLER: I believe Mr. Silver has opened the door for us to ask him why Reginald Harris said he lied at first, and we anticipate the answer being that he was scared.

THE COURT: What?

MS. FOWLER: We believe Mr. Silver has opened the door about why Reginald Bernard Harris lied, and we intend to ask the agent why Reginald Bernard Harris told him he lied, and we expect the answer to be because he was scared of Fredel Williamson. We thought we better bring that to the Court ahead of time. We think he asked him twice about his attitude, and that he had lied in the first story and we think we are entitled to ask him what the boy said about why he lied.

MR. SILVER: Judge, I don't think so. I stayed entirely within the direct examination. I didn't go outside of it. He at first indicated that the man had made those statements to him and that they were inconsistent and the man told him don't go through with the project.

THE COURT: Let me ask you this. Did he tell Walton why he changed his story?

MS. FOWLER: Yes, sir.

THE COURT: When did he do that?

MS. FOWLER: During this conversation, during, right in the middle of it. When they got ready to do the [Tr. 242] delivery, he said, "I lied, I don't want you to make this delivery, I'm scared of these people and that is why I lied to you about it." He said, "I can't make it because Fredel already knows I have been caught," and he said, "It's Fredel's dope," and he asked Mr. Walton what was the man's attitude, and I think his attitude is one of fear and I think we are entitled to bring that out.

MR. SILVER: To the contrary, he said the man's statement was made freely. He didn't say there was any fear.

THE COURT: I think we do have an inconsistency here. He made one statement and he changed it and said

something else. The jury, if there was a reason given for changing his story, I think the jury has a right to hear it, even though it is based on his fear. If it is based on his fear of the defendant, then so be it, I can't, you know—

MR. SILVER: Judge, I didn't go outside the direct examination. The direct examination was that the man made one statement and then he changed it and made another statement.

MS. FOWLER: Your Honor, he asked specifically whether, when he was making statements that were not true, what was his attitude. I think we are entitled to ask him, "Why did he tell you he did that."

THE COURT: Let me ask you this. Is your objection based on the fact she should have brought that up on direct?

[Tr. 243] MR. SILVER: Certainly.

THE COURT: I mean—

MR. SILVER: I stayed—

MS. FOWLER: Judge, I don't think I could have brought it up on direct.

MR. SILVER: Then you can't do it now, because I haven't gone outside the direct.

THE COURT: I think you probably could have brought it up on direct. I can't see why not. You have two statements there, you have a position, you have this position and then later it's 180 degrees changed. Why, did he tell you why he told you? I think that that is relevant. I mean, I think that's admissible testimony, as to why he—have you got anything else you want to say?

MR. SILVER: No, sir.

MS. FOWLER: No.

THE COURT: I'm going to allow it.

(Bench Conference Concluded).



## REDIRECT EXAMINATION

BY MS. FOWLER:

Q Agent Walton, you had two conversations with Reginald Bernard Harris, is that right?

A Yes, ma'am.

Q The first one was on the telephone?

A A telephone conversation while he was at Dooly County [Tr. 244] and I was in my office.

Q The second one was—

A Here at the Marshal's Service office downstairs.

Q All right. In the first one, a telephone call, what, if anything, did he say to you about Fredel Williamson?

A He stated that the cocaine had been, the acquisition for the 19 kilograms had been—

MR. SILVER: If your honor please, I object to that. That question has been previously asked and previously answered.

MS. FOWLER: Your Honor, there is some confusion about the two separate conversations and we think we are entitled to straighten that out based on Mr. Silver's cross examination.

THE COURT: Well, I think what you, that you wanted to inquire as to, as to a particular matter. I think you can ask a question that is specifically addressed to this particular matter concerning why he changed it, why he said one thing one time and another and another, another final. Just address the question directly to that. I don't want to wander all over the landscape of what was said. I think the objection is good.

BY MS. FOWLER:

Q In the telephone conversation, without telling us what, the first time you talked to him, did he refer to [Tr. 245] Fredel Williamson?

A Yes, ma'am, he did.

Q All right. Now let's go to the in person second conversation, the second conversation which was an in

person conversation. He told you a story about a Cuban, is that correct?

A Yes, ma'am.

Q And what did he tell you about the Cuban and Fredel Williamson?

A He stated he had met this same Cuban subject in, or had seen him with Fredel Williamson in Atlanta and that he believed that he was an associate of Fredel Williamson's.

THE COURT: Wait a minute. I think, that has already been testified to.

MR. SILVER: Correct.

THE COURT: You want to know why, it seems to me, the question on redirect, as I understood, was if Mr. Harris gave any reason for changing his story. I don't want to go through all this previous testimony.

MS. FOWLER: Yes, sir.

BY MS. FOWLER:

Q Agent Walton, you said that he told, that he changed his story. Is that correct?

A Yes, ma'am.

Q Okay. Did he offer you an explanation for why he had [Tr. 246] lied?

A Yes, ma'am.

Q In his own words, did he tell you something?

A Yes, ma'am.

Q That is what we want you to tell us.

A He said that he had lied about the story regarding the Cuban and the cocaine having been placed in the trunk and the note attached and the telephone call from the pay phone because he was afraid and was scared, for himself and his family, of Fredel Williamson.

MS. FOWLER: One moment, Your Honor.

THE COURT: Any recross?

MS. FOWLER: One moment, Your Honor.

THE COURT: Okay.

MS. FOWLER: That's all we have, Your Honor.  
THE COURT: Recross?

### RECROSS EXAMINATION

BY MR. SILVER:

Q Did Mr. Harris cite to you any reasons why he would be afraid of Mr. Williamson?

A He stated—I'm not sure I understood your question. He did state to me the reason that he was afraid or scared.

Q Did he give you a reason that Mr. Williamson was a violent man?

A He gave me a reason why he was scared.  
[Tr. 247] Q Yes, sir, but did he tell you that Mr. Williamson was a violent man?

A In those words?

Q Yes, sir.

A No, sir.

Q All right, sir. Now, this young fellow, at the time he made this statement to you, he was in your custody, was he not?

A Yes, sir, he was.

Q And he was downstairs in this courthouse in the lock-up in the Marshal's office?

A He was in an office, yes, sir.

Q And he had the United States Marshal's force downstairs controlling that office, did he not?

A The office that we were in?

Q Yes, sir.

A No, sir, there was no one else in the office but Mr. Harris and myself.

Q And is that office normally under the control of marshals?

A It's in their work space downstairs, yes, sir.

Q And being in that area, could he have been subjected to any violence by anybody?

A I don't see how it would be possible.

MR. SILVER: Thank you, sir. I have no other [Tr. 248] questions.

MS. FOWLER: I have one on account of his, Your Honor.

### FURTHER REDIRECT EXAMINATION

BY MS. FOWLER:

Q Why did he tell you he was scared of Fredel Williamson?

MR. SILVER: Your Honor, previously asked and answered.

MS. FOWLER: Your Honor, Mr. Silver went into it. I couldn't have gone into it unless he opened the door.

(Bench conference).

THE COURT: Tell me why.

MS. FOWLER: Because he said he was afraid Fredel Williamson would kill him.

MR. SILVER: He has already said that. He already said what his purposes were.

MS. FOWLER: We couldn't have asked that, and Mr. Silver did, and made it restricted as to the word violent, and we feel like he opened the door as to why.

MR. SILVER: He has already given his reason. He stated it on your direct examination.

THE COURT: He said, it was apparent he wanted to testify more but was afraid to, he was afraid of the Court's ruling, not afraid of anything I was going to do to him, but [Tr. 249] he was wondering. I'm going to allow the question. I think you opened it up enough, but that is as far as it's going.

MS. FOWLER: Yes, sir.

MR. SILVER: Judge, how did I open it up? I asked the question whether or not the man made any statement that Mr. Williamson was violent. How did that open it up to let her now go back and ask another question?

MS. FOWLER: Your Honor, he said, he asked him did he say why he was scared.

MR. SILVER: He gave his reason on his direct examination, Judge, that the man feared for himself and his family.

MS. FOWLER: No.

MR. SILVER: Read it back.

MS. FOWLER: The witness has yet to say that.

MR. SILVER: Read it back.

(The referred to question and answer were read).

MS. FOWLER: He said he was scared of Fredel Williamson, and I respectfully disagree. Mr. Silver just then said, did he say why he was scared, and we think that opens the door for the witness to answer it.

THE COURT: I don't want to prejudice this man's rights, but I think if he had asked, in answer to your question, when he asked is he violent, if he knew he was a violent man, he hesitated and then he said, "Not in those [Tr. 250] words." And then you, I think he could have easily said, "Not in those words, but may I explain?" And I would have said yes, and then he could have said, "He told me—" what is it you think he is going to say?

MS. FOWLER: He told him he was afraid he would kill him and his mother, and his mother was not there protected by the marshal.

THE COURT: All right. This brings up another question. What is that based on, just a—a threat, maybe?

MS. FOWLER: I don't know whether Fredel had previously threatened him or not.

THE COURT: I'm going to amend it. If he had told him, had made a definite threat, then that is one thing. But just a fear that he would kill him—

MS. FOWLER: But, Judge, I couldn't ask it and Mr. Silver opened it up, "Did he say why?" All he could say was, he said he was scared, and Mr. Silver says why, and I think we are entitled to expand.

MR. SILVER: I didn't say why.

MS. FOWLER: Yes, sir.

MR. SILVER: I asked him did he, did Mr. Harris state that Mr. Williamson was a violent man, and he said no.

THE COURT: All right. This is important enough to where it brings a new element into the case and I'm going to send the jury out for a moment and hear what he did tell him [Tr. 251] and then I will rule.

(Bench Conference Concluded).

THE COURT: Ladies and Gentlemen, you know the way to the jury room, I'm sure.

JUROR: Yes.

(Jury excused from the courtroom).

THE COURT: All right, ask the question.

BY MS. FOWLER:

Q Agent Walton, did Reginald Bernard Harris tell you why he was afraid of Fredel Williamson?

A He stated that he was afraid that Fredel Williamson would kill him or his mother if he found out that he was telling the truth about the cocaine.

Q And did he state that he lived with his mother?

A Yes, ma'am, and that Mr. Williamson knew where they lived.

MS. FOWLER: That would be what we—

THE COURT: Mr. Silver, you may cross examine. I will rule after I hear both the direct and the cross.

BY MR. SILVER:

Q Mr. Walton, did Mr. Harris state to you that he had been threatened by Fredel Williamson?

A No, sir.

Q Now secondly, did Mr. Harris state to you that he was living with his mother?

[Tr. 252] A That is what he told me, yes, sir.



Q Did he not tell you that his mother was living in Ohio with her husband?

A No, sir.

Q He didn't tell you that?

A He told me she was visiting Ohio.

Q He didn't tell you that his mother's telephone number is in Ohio with her new husband Louis Brinkley, he didn't tell you that?

A Living there?

Q Yes.

A No, sir, said she was visiting Ohio and her new husband there, that he resided with his mother in the Atlanta area and they had two separate phone numbers at that house where the two of them resided.

THE COURT: Is there anything further? I want to limit it to this threat.

MR. SILVER: He has testified, Judge, there was no threat.

THE COURT: All right. The ruling is that I'm going to let in this same testimony. In other words, Mrs. Fowler can ask the question she asked and you can ask what you asked, and then we are going to leave it. I'm not going to, I'm going to let the jury decide what—let me ask this question. Did he give you any basis for the fear of his [Tr. 253] life?

THE WITNESS: In a general sense of conversation between the two of us, he said he knew the capabilities of Fredel Williamson with respect to the fact he had stated he was afraid he would be killed by Mr. Williamson.

THE COURT: Did he go further than that?

THE WITNESS: No, sir.

MR. SILVER: Judge, I would like to request the Court to read back what his response was on the direct examination when he stated what his reasons were in direct examination. He stated what his reasons were on the direct examination.

THE COURT: Here is the ruling of the Court. I'm going to let in the same testimony that was elicited by Mrs. Fowler and yourself, on this, just in the last few minutes. I'm not going to let you expand on that. The question was asked, Mrs. Fowler sat down, you asked some questions, you sat down. I feel like that with the questions that were asked, that it is at least, at least the jury has some information that is not—I don't want to get into speculation, that is the ruling of the Court. Now, can you recall exactly what you asked?

MR. SILVER: Judge, I would like to object to that on the grounds that this is an effort by the United States Attorney's Office to rehabilitate her own witness. The [Tr. 254] question was previously asked, previously answered. The man gave his reasons why in his initial remarks, as to why he said that the man told him that he feared for himself and feared for his mother. Now, for her to go back and rehabilitate her witness—

THE COURT: You mean on direct?

MR. SILVER: Yes, sir.

THE COURT: Well, that's the ruling. I'm going to allow the question.

MS. FOWLER: Your Honor, so I don't step afoul of the Court's ruling, as I understand it, I may just say why did he tell you he was afraid, and he give the answer—

THE COURT: I don't want it elaborated on any more than he, I don't want him to get into the things that came out after the two of you all asked your questions. What you asked him and things like that.

MS. FOWLER: I understand.

THE COURT: Let's just, we will just say the jury was here, the jury heard that testimony, and we will move on, but the jury wasn't here, so we have to do it again so they can hear it. So bring the jury in and both you all ask the same questions, do not broaden it from what you asked.

(The Jury Returned to the Courtroom).

THE COURT: All right, Mrs. Fowler.

BY MS. FOWLER:

[Tr. 255] Q Agent Walton, did Reginald Bernard Harris tell you why he was afraid of Fredel Williamson?

A Yes, ma'm.

Q What did he tell you?

A He told me that, he provided me with the information regarding Mr. Williamson's involvement with the cocaine, that he was afraid that Mr. Williamson would kill him or his mother.

MS. FOWLER: I thank you, sir.

THE COURT: Mr. Silver.

#### FURTHER RECROSS EXAMINATION

BY MR. SILVER:

Q Mr. Walton, did Mr. Harris tell you that Mr. Williamson had threatened him?

A No, sir.

Q Did he tell you that Mr. Williamson had threatened his mother?

A No, sir.

Q Mr. Walton, were any portions of this interview with Reginald Harris recorded?

A No, sir.

Q Was any portion of this interview with Reginald Harris written down and subsequently signed by Reginald Harris?

A No, sir. I believe I took some notes but there was no signed statement, as I recall.

[Tr. 256] MR. SILVER: Thank you, Judge. I have no other questions.

THE COURT: You may go down, now.

(Witness excused).

\* \* \* \*

[Tr. 307] MR. SILVER: Judge, on behalf of Mr. Fredel Williamson, I would respectfully move the Court for a judgment of acquittal of each of the three counts of the indictment, and as grounds therefore, Judge, I don't know if I have to enumerate my grounds or not.

THE COURT: I will let you do whatever you feel like you ought to do.

MR. SILVER: All right, sir. As grounds therefore, Judge, I would say that the evidence is insufficient to sustain a conviction on each of the three counts, and would [Tr. 308] especially cite, Judge, the rule of evidence 403, wherein we have, we have objected throughout the trial; rule 404, the character evidence not being admissible to prove conduct; and the overruling of the previous motion for mistrial, and Judge, finally, the insufficiency of the existence of the conspiracy.

THE COURT: Well, I don't think I need to hear from the Government. I'm quite familiar with the evidence, because I had to rule on almost every bit of it. This was a very interesting case, it has more serious evidentiary questions than any I believe I have ever tried. But nevertheless, I feel confident that, that the rulings were correct and that there is enough evidence for the jury to find beyond a reasonable doubt that he was guilty of each and every count if they choose to do so.

Also as I said earlier, I feel like in all due respect to the 11th Circuit, some of the cases did not give me the guidance that I would like to have had, and I just have to read them in connection with other cases and decide this is what they really intend for district judges to do, and I have done it that way and we will just have to see. If there is a conviction, I'm sure there will be an appeal.

So I'm denying your motion.

MR. SILVER: Judge, one other matter that I had. Mrs. Fowler, excuse me. As I recall, during one of our side [Tr. 309] bar conferences the Court seemed to suggest that at an appropriate time I could renew my motion that we had previously made to exclude parts of the testi-

mony as related by Agent Walton, with reference to Reginald Harris. And I'm still concerned about that, Judge. I know, I understand Your Honor's ruling, wherein Your Honor said that he could testify to things that existed during the pendency of the conspiracy. The point that I am concerned about is—

THE COURT: What he said, the phone call—

MR. SILVER: What he said about why he was afraid and that he was in fear, whatever the words were he used. It seems as though to me that was after the conspiracy and that was an observation on his part, not a restatement of anything that happened during the conspiracy.

THE COURT: Do you want to address that?

MS. FOWLER: No, Your Honor, the Court has already ruled.

THE COURT: I feel like that under the circumstances, I allowed that on redirect, I feel like that in your cross examination, that you might have brought out enough, or I feel like more than might, that you did bring out enough that would give the Government an opportunity to explain it. Now, quite frankly, I would have done that—strike that. It is not based upon just what you brought out on cross. I would have allowed the Government to do that on [Tr. 310] direct. If the Government said, "Did he tell you why he was changing his story on direct," I would have probably let him say because he was afraid, "I was afraid he would kill me."

You know, I think it balanced out pretty well. There is no, as far as, as far as the evidence is concerned, there is no evidence he ever made a threat against him, there is no evidence, it could be speculation on Harris' part that he was afraid that because this guy was doing drugs, that he would kill him, and so I mean, you know, so I don't think—anyway, I'm going to leave it alone.

MR. SILVER: All right.

THE COURT: But your point is preserved.

MR. SILVER: Thank you.

\* \* \* \*

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA

Case Number CR 89-37-MAC-DF

UNITED STATES OF AMERICA

v.

FREDEL WILLIAMSON

JUDGMENT INCLUDING SENTENCE  
UNDER THE SENTENCING REFORM ACT

THE DEFENDANT:

- ☐ pleaded guilty to count(s) \_\_\_\_\_.
- ☒ was found guilty on count(s) One, Two, and Three after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
21:846 icw 21:841(a)(1)	Conspiracy to possess with intent to distribute and to distribute cocaine, a Schedule II controlled substance	One
21:841(a)(1) 18:2	Aiding and abetting to possess with intent to distribute cocaine, a Schedule II controlled substance	Two
18:1952 & 2	Travel in interstate commerce to promote and carry on unlawful drug business enterprise	Three

The defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_, and is discharged as to such count(s).



- ☐ Count(s) \_\_\_\_\_ (is) (are) dismissed on the motion of the United States.
- ☐ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
- ☒ It is ordered that the defendant shall pay to the United States a special assessment of \$150.00, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:  
265-47-7028

Defendant's residence address:  
5161 Hidden Hill Trace  
Stone Mountain, GA 30058

November 8, 1989  
Date of Imposition of  
Sentence

/s/ Duross Fitzpatrick  
Signature of Judicial  
Officer

DUROSS FITZPATRICK  
U.S. District Court Judge  
Name & Title of Judicial  
Officer

November 15, 1989  
Date

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 327 months on Count One, 327 months on Count Two, and 60 months on Count Three to run concurrently for a total period of 327 months.

- ☐ The Court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district.

a.m.

☐ at — p.m. on \_\_\_\_\_.

☐ as notified by the Marshal.

- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons
- ☐ before 2 p.m. on \_\_\_\_\_.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation Office.

### RETURN

I have executed this Judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at, \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Five Years.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- ☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.
- (1) Defendant shall not possess any firearms or other dangerous weapons.
- (2) Defendant shall not possess illegal controlled substances. Possession will result in mandatory revocation.
- (3) Defendant shall not violate any other federal, state or local laws.

## STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another Federal, state or local crime;
- 2) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 3) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) the defendant shall support his or her dependents and meet other family responsibilities;
- 6) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate

with any person convicted of a felony unless granted permission to do so by the probation officer;

- 11) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgment.

### FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of \$150.00, consisting of a fine of \$0 and a special assessment of \$150.00.

- ☒ These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

\$50.00 mandatory assessment on Count One.  
 \$50.00 mandatory assessment on Count Two.  
 \$50.00 mandatory assessment on Count Three.

This sum shall be paid ☒ immediately.  
☐ as follows:

- ☐ The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:
- ☐ The interest requirement is waived.
  - ☐ The interest requirement is modified as follows:

It is the Court's judgment that the defendant is unable and not likely to become able to pay all or part of a fine even with the use of a reasonable installment schedule; therefore, the Court waives the fine as well as any alternative sanctions in this case. The Court is also waiving the additional fine requiring that defendant pay the cost of imprisonment and/or supervision fee.



IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 89-8938

Non-Argument Calendar

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D.C. Docket No. CR-89-37

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

versus

FREDEL WILLIAMSON, a/k/a "FRED",  
*Defendant-Appellant.*

---

Appeal from the United States District Court  
for the Middle District of Georgia

---

(December 23, 1992)

Before TJOFLAT, Chief Judge, HATCHETT and AN-  
DERSON, Circuit Judges.

PER CURIAM:

Affirmed: See Circuit Rule 36-1.

Judgment Entered: December 23, 1992

For the Court: MIGUEL J. CORTEZ  
Clerk

By: /s/ [Illegible]  
Deputy Clerk

Issued as Mandate: Apr. 07, 1993

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 89-8938

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

versus

FREDEL WILLIAMSON, a/k/a "FRED",  
*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Middle District of Georgia

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ON PETITION(S) FOR REHEARING AND  
SUGGESTION(S) OF REHEARING EN BANC

Before: TJOFLAT, Chief Judge, HATCHETT and AN-  
DERSON, Circuit Judges.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Joseph D. Hatchett  
United States Circuit Judge

## SUPREME COURT OF THE UNITED STATES

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 No. 93-5256

 FREDEL WILLIAMSON,  
*Petitioner*

v.

UNITED STATES

---

 ON PETITION FOR WRIT OF CERTIORARI TO THE  
 UNITED STATES COURT OF APPEALS  
 FOR THE ELEVENTH CIRCUIT
 

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ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

January 10, 1994

## ORDER LIST

FRIDAY, JANUARY 21, 1994

## ORDER IN PENDING CASE

93-5256 WILLIAMSON, FREDEL v. UNITED STATES

In lieu of the first question presented by the petition for a writ of certiorari, the parties are directed to brief and argue, in addition to Questions 2 and 3, the following question: Whether a post-arrest confession by an accomplice implicating a defendant, offered as an admission against penal interest of an unavailable declarant under Federal Rule of Evidence 804(b)(3), bears adequate indicia of reliability to render it admissible under Rule 804(b)(3) and the Sixth Amendment Confrontation Clause?